IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 27 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GARDEN SILK MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 27 of 1987
MR RP BHATT for Petitioner No. 1
MR BB NAIK with MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The following questions are referred to us at the

instance of the revenue in respect of assessment year 1977-78 :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that notwithstanding the provisions of Sec. 80VV of the I.T. Act, 1961, the assessee was entitled to a deduction in respect of sum of Rs.12,550 paid by the assessee to the I.T. Practitioners in respect of proceedings of M/s. Garden Silk Weaving Factory ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to higher depreciation and extra shift allowance in respect of electrical transformer ?"

2. As far as question No. 1 is concerned, the learned counsel for the parties agree that the controversy raised herein is concluded against the assessee by the decision dated 14.11.2000 of this Court in Income Tax Reference No. 89 of 1985. Following the said decision, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

3. Coming to question No. 2, the relevant provisions of the Income Tax Rules, Appendix I, Part I for the relevant assessment year read as under :-

"The extra shift allowance shall not be allowed in respect of ... ... and also in respect of the following items of machinery and plant to which the general rate of depreciation of 10 per cent applies :-

(1) Electrical machinery - Switch-gear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations."

In view of the above clear statutory provision, the Tribunal clearly erred in law in coming to the conclusion that that the assessee was entitled to higher depreciation and extra shift allowance in respect of electrical transformer. We accordingly answer the question in the negative i.e. in favour of the revenue

and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-